

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
A SHORELINE SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
CLALLAM COUNTY TO
DUNGENESS FARMS DUCK CLUB,

DUNGENESS FARMS DUCK CLUB,

Appellant,

v.

CLALLAM COUNTY,

Respondent.

SHB No. 81-44

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a substantial development permit condition imposed by Clallam County, came before the Shorelines Hearings Board, David Akana (presiding), Gayle Rothrock, Nat Washington, A. M. O'Meara, Steve Tilley and Dennis Derickson, at a hearing on March 30, 1982, in Sequim.

Appellant was represented by its agent, Mike Wright; respondent was represented by Craig Knutson, deputy prosecuting attorney. Gene

1 Barker, court reporter, recorded the proceedings.

2 Having heard the testimony, having examined the exhibits, and
3 having considered the contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Dungeness Farms Duck Club is located on property situated in
7 Dungeness, Washington at the northern end of Dungeness Road between
8 the Three Crabs Restaurant on the east and the Dungeness River on the
9 west. The land is intersected by a slough running between the river
10 on the west and a clubhouse to the east. The northern third of the
11 property consists of intertidally flooded lands, salt marshes, and
12 saltwater sloughs. The northwestern corner of the site has been
13 isolated by the overflow channel of the Dungeness River. The
14 remainder of the site consists of grasslands and wetlands.

15 Runoff from the site drains into the river, the overflow channel,
16 and the slough. Portions of the site are tidally influenced.
17 Subsurface water levels follow the influence of the tide. The site is
18 located on the Strait of Juan de Fuca.

19 II

20 Appellant Dungeness Farms Duck Club, a private hunting club,
21 applied for a substantial development permit to construct a 400 feet
22 by 300 feet waterfront pond and two smaller (40 feet by 100 feet)
23 ponds. The approximate cost of the development would be about
24 \$21,600. The pond construction area lies halfway between the
25 Dungeness River and a road known as Dungeness Way.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB No. 81-44

III

The large pond at its closest point will be about 100 feet from the Dungeness River. The two smaller ponds will be more than 200 feet from the river and Strait of Juan de Fuca. The area can be inundated occasionally during a 3 to 4 month period of the year.

IV

The purpose of the development is to enhance the habitat on the site for migratory ducks and other waterfowl for the ultimate benefit of the recreational hunting prospects of the members of the club.

V

Clallam County issued a shoreline substantial development permit as requested but required that appellant provide public access along the shoreline as a condition:

Public access for on-foot traffic shall be permitted to the beach only during non-hunting seasons. This permit would allow placement of no trespassing signs not to exceed five in number and 2' x 2' in size, facing north clearly delineating the conservancy environment. This shall be subject to review by the B.C.C.C whenever the petitioner shows that the public has demonstrated a misuse of this [privilege].

The intent of the condition was to provide public access along an accreting beach, and not upon the tidelands, uplands, or marsh areas. The subject beach lies entirely within the conservancy environment.

Appellant appealed to this Board from the imposition of this condition.

VI

The Clallam County Shoreline Master Program (CSMP) applies to this

1 matter as the adopted and approved program. WAC 173-19-130.

2 Provisions therein relating to public access for a recreation use
3 include:

4 XIV.D.22.a. The main purpose of designating an area
5 as a Conservancy Environment is to protect and
6 preserve that area to ensure recreational benefits to
7 the public and to protect historic sites. Any
8 activity that does not meet this purpose is
9 prohibited.

10

11 c. Priority will be given to facilities which
12 increase public access to the shorelines for those
13 recreational activities which will not damage the
14 ecology of a Conservancy Environment. CSMP, p. 26

15 XV.F.21.a. The Rural Environment is intended to
16 maintain open space for those recreational uses which
17 are compatible with agricultural activities. This
18 fact must be kept in mind in granting permits for
19 constructions of a recreational nature on shorelines
20 in this environment.

21 b. The recreational experience may be either an
22 active one, such as boating, fishing or hunting, or
23 it may be passive, such as enjoying the natural
24 beauty of a vista. Adequate access to areas where
25 these experiences can be enjoyed should be permitted.

26 c. Other than single-family residences, priority
27 shall be given to those developments which provide
28 recreational uses and facilitate access to the
29 shoreline. CSMP, p. 39.

30 The following relevant "Use Elements" are considered in the
31 approval or denial of a development application:

32 X.B. Public Access Element

33 Provision shall always be made for public access to
34 publicly owned shorelines and, further,
35 consideration shall be given to the impact of
36 denial of public access by private developments on
37 privately owned shorelines.

1

2 D. Recreation Element

3 Consideration shall be given to the opportunities for
4 preservation and enlargement of recreational
5 possibilities. This shall include, but not be
6 limited to, parks, tidelands, beaches, and other
7 recreational areas such as boat launching ramps and
8 fishing trails along streamways.

9 CSMP, p 3.

10 The instant proposed development is located on shorelines situated
11 within both the conservancy and rural environments as provided in the
12 CSMP. The public access requirement applies to a portion of the
13 property located in the conservancy environment on which there is an
14 accreting beach.

15 VIII

16 Any Conclusion of Law which should be deemed a Finding of Fact is
17 hereby adopted as such.

18 From these Findings the Board enters these

19 CONCLUSIONS OF LAW

20 I

21 The only issue presented is whether the condition imposed was
22 correctly imposed. The CSMP prohibits any activity in a conservancy
23 environment that does not meet the purpose of the designation. That
24 purpose is to protect and preserve the area to ensure recreational
25 benefits to the public. CSMP p 26. Of those activities that are
26 permitted, priority is given to facilities for recreational activities
27 which increase public access and which will not damage the ecology.

1 CSMP p 26. Under the CSMP and the record established by the parties,
2 the condition imposed is supportable under the conservancy environment
3 requirements. Without the condition imposed, the development would
4 not meet the purpose of the CSMP, and especially XIV.D.22.a thereof.

5 Clallam County has expressed a clear intent through its shoreline
6 master program to require recreational benefits for the public in a
7 conservancy environment. Nothing in the evidence presented by the
8 parties would compel a different result. And assuming that no
9 evidence could compel a different result, any desired change in the
10 intent of the County as expressed in the CSMP should be addressed to
11 the County in its rule making role.

12 II

13 The public access condition has not been shown to be inconsistent
14 with the CSMP or the Shoreline Management Act. Accordingly, the
15 permit, as conditioned, should be affirmed.

16 III

17 Any Finding of Fact which should be deemed a Conclusion of Law is
18 hereby adopted as such.

19 From these Conclusions the Board enters this
20
21
22
23
24
25
26

ORDER

The action of Clallam County issuing a shoreline permit,
conditioned on providing public access, is affirmed.

DATED May 21st, 1982.

SHORELINES HEARINGS BOARD

(See Dissent)

DAVID AKANA, Lawyer Member

Nat W. Washington
NAT W. WASHINGTON, Chairman

Gayle Rothrock
GAYLE ROTHROCK, Vice Chairman

A. M. O'Meara
A. M. O'MEARA, Member

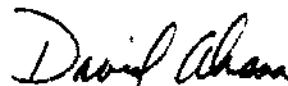
(See Dissent)

STEVE TILLEY, Member

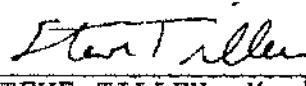
Dennis Derickson
DENNIS DERICKSON, Member

1 | DISSENTING:

2 |
3 | Respondent has shown that public trespass from the beach to the
4 | upland and marsh areas is not likely. Thus, the county is not
5 | restricted by the SMP from requiring public access on the basis of
6 | potential damage to the marsh. However, if public access were not
7 | provided, the proposed development would not necessarily be
8 | inconsistent with the SMP (Section XIV.D.22). This section states
9 | that the conservancy environment designation "...is to protect and
10 | preserve that area to insure recreational benefits to the public and
11 | to protect historic sites." Existing public "recreational benefits"
12 | and "historic sites" are apparently not detrimentally affected by the
13 | proposed development to the extent that the project should be a
14 | prohibited activity. Accordingly, the provision of additional public
15 | access is not required under this provision of the SMP.

16 |
17 | 

18 | DAVID AKANA, Lawyer Member

19 |
20 | 

21 | STEVE TILLEY, Member